IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.554 OF 2003

Narayan Govind Mali ...Appellant
vs.
Vithoba Lingu Shinde
(since deceased through L.Rs.)
Ganesh Vithoba Shinde & Ors. ...Respondents

Mr.Dilip Bodake for the Appellant

CORAM: A.S.OKA,J.
DATE : JULY 11, 2007.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the first Defendant. In a suit filed by the first Respondent, a decree for possession has been passed against the Appellant by the trial court which is confirmed in an Appeal.

2. The first submission made by the learned Advocate for the Appellant is that even going by the averments made in the plaint filed by the first Respondent, the name of the predecessor of the Appellant was entered as a tenant in the revenue record in respect of the suit agricultural land and therefore the civil court could not have passed a decree for possession. The second submission is that the suit was barred by limitation in as much as even according to the case of the first Respondent, he is in constructive possession from 11th November 1957 and the suit is filed in January 1982.

3. I have considered the submissions. In the plaint, it is asserted by the first Respondent that he has filed an

application under section 70 (b) of the Bombay Tenancy and Agricultural Lands Act,1948 for a negative declaration against the predecessor of the defendant. In the said proceeding, it was held that the predecessors of the defendant were not the tenants. The said finding recorded by the tenancy authority was confirmed by the Maharashtra Revenue Tribunal. Therefore, an assertion has been made that the Defendants are in unlawful possession. Therefore, there is no merit in the first submission of the learned Advocate for the Appellant.

4. In so far as the second submission is concerned, it is pertinent to note that the plea of the Appellant was that he has perfected his title to the suit property by virtue of adverse possession. The suit filed by the first Respondent was on title. The starting point of limitation in accordance with Article 65 of the Limitation Act,1963 is from the day on which the possession of the Defendant became adverse. The plea of adverse possession raised by the Appellant has been discarded by both the courts below on the basis of the appreciation of evidence on record. The Appellate court has held that the Appellant has failed to establish essential ingredients of plea of adverse possession.

5. In the circumstances, no fault can be found with the decree for possession passed by the Appellate court on the basis of title. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE